UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

FRONTIERVISION OPERATING PARTNERSHIP, L.P.,	)	
Plaintiff	)	
v.	)	Civil No. 99-0004-B
RICHARD CHIARAVELOTTI, and HEATH CROCKER,	)	
Defendants	)	

ORDER

Plaintiff seeks an Order of Attachment and Attachment on Trustee Process against Defendant Richard Chiaravelotti. Hearing was had on the Motion on March 31, 1999. Plaintiff appeared through counsel and Defendant appeared *pro se*. Plaintiff presented no additional evidence during the hearing, electing to rest on the affidavits of Reginald Clark, Frank Gallup, and John Alsop, Esq., all filed in support of the Motion for Attachment. Defendant presented no evidence, but argued that Plaintiff's evidence regarding damages was speculative as to the number of cable descramblers sold by Defendant as well as the market area into which the descramblers were sold.

In this District, the law of the State of Maine governs our analysis of the Motion. D. Me. R. 64. In Maine, an Attachment may by approved only upon a finding that "it

is more likely than not that the plaintiff will recover judgment, including interest and costs, in an amount equal to or greater than" the amount sought to be attached and any other security available to satisfy a judgment. Me. R. Civ. P. 4A(c).[1] These findings may be based upon affidavits made "upon the affiant's own knowledge, information or belief; and, so far as upon information and belief, [that] state that the affiant believes this information to be true." Me. R. Civ. P. 4A(i).

Plaintiff's affidavits in this case reveal the following relevant facts:

1) Plaintiff is a cable television company which provides transmission of video programming via a cable system to approximately 92,000 subscribers in central and southern Maine.

2) Certain programming (premium channels and pay per view programming) offered by Plaintiff is encrypted, preventing unauthorized receipt of the programming without equipment designed to descramble the signal.

3) Defendant has not been authorized by Plaintiff to sell, alter, distribute or manufacture altered electronic coding devices used in connection with decoding cable television programming provided by Plaintiff, nor has he been authorized to sell decoding units.

[1] The standards are the same for Attachment on Trustee Process. Me. R. Civ. P. 4B.

4) In July, 1997, Plaintiff's employee Frank Gallup learned that Defendant might be illegally selling cable decoding units [”PIRATE BOXES” or “UNITS”].

5) Pursuant to a tip, Mr. Gallup located an advertisement in the July 2, 1997 issue of *Uncle Henry's*, a sales magazine, advertising cable descramblers that would allow the purchaser to receive premium channels and pay per view programming. Mr. Gallup called one of the numbers in the advertisement and arranged to purchase a pirate box for use in Plaintiff's market area for $225. The purchase was completed two days later, and the pirate box was found to descramble Plaintiff's premium channels and pay per view programming freely.

6) The front cover of the July 2, 1997 issue of *Uncle Henry's* indicates that the publication serves the geographic area including Maine, New Hampshire, Vermont, Massachusetts and New Brunswick, Canada.

7) Defendant told Mr. Gallup that he had sold 175 pirate boxes since December, 1996.

8) Defendant told Mr. Gallup that he was receiving cable service via a cable running from his neighbor's house over their shared driveway, but that he was currently unable to test the box he was selling to Mr. Gallup because a cable truck had recently pulled up in front of his house and “tapped out” all of the premium channels. Defendant specifically indicated to Mr. Gallup that

Defendant got all the channels, but did not have to pay extra for the extra channels that he received.

9) In addition to the pirate box purchased by Mr. Gallup, Plaintiff has evidence of the following sales by Defendant into its market area:

(a) one pirate box to Defendant Heath Crocker, seized by Mr. Gallup and a Monmouth Police Officer on August 19, 1998;

(b) one pirate box to Winslow Police Officer Gina Cabannis, delivered by Paul E. St. Amand, Sr. on November 2, 1998;

(c) one pirate box to Paul E. St. Amand, Sr., purchased in July or August, 1998.

10) Plaintiff now charges $33 per month for premium channels, and $3.49 per pay per view movie. There are occasionally other pay per view events offered at an average cost to the consumer of $30. There is no evidence regarding the rates for these services for the entire period beginning December, 1996.

11) The useful life of a pirate box is approximately 10 years. Of the four boxes sold within Plaintiff's market area, those sold to Mr. Gallup and Officer Cabannis were never in service, there is no evidence regarding the length of time the box sold to Defendant Crocker was in service, and there is no evidence that the box sold to Mr. St. Amand was in service longer than three months.

Conclusions of Law

Plaintiff has brought this action under two separate statutes. The first specifically prohibits the interception of "cable service." The relevant sections provide:

> (1) No person shall intercept or receive or assist in intercepting or receiving any communications service offered over a cable system, unless specifically authorized to do so by a cable operator or as may otherwise be specifically authorized by law.
>
> (2) For the purpose of this section, the term "assist in intercepting or receiving" shall include the manufacture or distribution of equipment intended by the manufacturer or distributor (as the case may be) for unauthorized reception of any communications service offered over a cable system in violation of subparagraph (1).

47 U.S.C. § 553. The Court easily concludes that it is more likely than not Plaintiff will prevail on its claim against Defendant under section 553. Plaintiff's statements to Mr. Gallup about his own cable service evidence his intent that the pirate boxes be used to receive premium and pay per view programming without paying for them. The advertisement in *Uncle Henry's* indicates that the boxes will receive premium programming, "no extras needed."[2] The pirate boxes did, in fact, descramble

[2] On this point, however, the Court does not accept the statement in paragraph 9 of Reginald Clark's affidavit to the effect that the sole purpose of Defendant's sale of decoding units is to permit people to illegally receive premium cable service. There is no evidence in this record that these particular units were "altered." *Cf., Intermedia Partners SE v. QB Distributors LLC*, 999 F. Supp. 1274 (D. Minn. 1998) (decoder boxes modified so as to eliminate the ability of the cable company to 'address' the box, and thereby terminate service, from its computer); *Time Warner Cable v. Cable Box* Wholesalers, 920 F. Supp. 1048 (D. Ariz. 1996) (same); *Subscription Tele. of Greater Wash. v. Kaufmann*, 606 F. Supp. 1540 (D.D.C. 1985) (same).

Plaintiff's premium channels and pay per view programming. The Court is further satisfied that it is more likely than not Plaintiff will recover under 47 U.S.C. section 605, which prohibits assistance in the interception of radio communications, which in turn has been easily interpreted by courts to prohibit the sale of pirate boxes. *Eg.*, *United States v. Beale*, 681 F. Supp. 74, 76 (D. Me. 1988).

Defendant argues Plaintiff's evidence is speculative as to whether there were any sales into Plaintiff's market area. As indicated in the Court's findings of fact, the Court agrees, except as to the four sales enumerated in paragraph (9). *Cf., Time Warner*, 920 F. Supp. at 1051 (noting that the court was presented with evidence that 198 decoders "equipped to intercept Time Warner's cable signals in Queens and Manhattan [were sold] to customers living in those areas"). These four sales are sufficient, however, to give Plaintiff standing as a "person aggrieved" under the statutes. 47 U.S.C. §§ 553(c)(1), 605(e)(3)(A).

The remaining issue is the amount of the attachment to be awarded. Plaintiff has elected, at least for purposes of this Motion for Attachment, to seek actual, rather than statutory, damages under section 605. *See*, 47 U.S.C. § 605(c) (permitting damages under either of the two formulations at plaintiff's election). Plaintiff calculates these damages by multiplying the 175 boxes Defendant admitted selling by the current monthly fee for premium channels for a useful life of 10 years for each box. In

addition, Plaintiff assumes one Pay Per View movie per day per box at a rate of $3.49 per movie. In total, Plaintiff's calculations result in a loss of revenue of $2,891,700 over a ten year period from the 175 boxes. Plaintiff has indicated that it seeks an attachment in the amount of only $900,000, to allow for "possible variation and error in the assumption[s] set forth and for the costs of providing of providing said service." Pltf. Memo. at 4.[3]

These assumptions do not work well, however, when applied to the four boxes the Court finds were sold within Plaintiff's market area. Two of the boxes were never placed into service, and one was confiscated less than two years after Plaintiff's evidence shows Defendant began selling the pirate boxes. Accordingly, while Plaintiff's proof at trial may permit a different damage calculation, the Court finds that Plaintiff has only shown on this Motion for Attachment that it is more likely than not Plaintiff will recover $40,000, representing the minimum statutory damages available under section 605. In addition, section 605 directs the Court to award reasonable attorneys' fees to prevailing parties. Plaintiff has submitted the Affidavit of its attorney, John Alsop, Esq., who states "I believe the estimate of Forty Thousand Dollars ($40,000.00) for attorneys' fees and costs is conservative in this case because

[3] The Court is particularly concerned about the assumption that each household would use the pirate box to view one Pay Per View movie per day.

of the likelihood of extensive discovery and evidentiary hearings on a preliminary injunction and potential trial of the case." In the absence of other evidence supporting this estimate, the Court is not prepared to award an attachment for attorneys' fees and costs in that amount. The Court is satisfied, however, that there will be substantial fees and costs, particularly in light of the evidentiary difficulties Plaintiff may encounter in this case. The Court will therefore approve an attachment in the amount of $10,000 to cover potential attorneys' fees and costs. *See, TCI Cablevision of New Eng. v. Pier House Inn*, 930 F. Supp. 727, 737 (D.R.I. 1996) (awarding $10,500 in attorneys fees and costs for case involving use of pirate boxes in one location).

Conclusion

Accordingly, Plaintiff's Motion for Attachment and Attachment on Trustee Process is hereby GRANTED in the amount of Fifty Thousand Dollars ($50,000).

SO ORDERED.

Eugene W. Beaulieu
U.S. Magistrate Judge

Dated on March 3, 2000.